

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/666,998	LAIKHTER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MARK STAPLES	1637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 01/14/2010.
2. ☒ The allowed claim(s) is/are 51-58 and 61.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application  |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>01/06/2010</u> . |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date <u>12/14/2009</u> | 7. <input type="checkbox"/> Examiner's Amendment/Comment   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                     | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance                           |
|  | 9. <input type="checkbox"/> Other ____.  |

/Mark Staples/  
Primary Examiner, Art Unit 1637  
01/15/2010



## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/11/2009 has been entered.
2. Applicant's supplemental submission filed on 01/14/2010 has been entered.
3. Applicant's amendment of claims 51 and 53 in the paper filed on 01/14/2010 is acknowledged.

Claims 51-58 and 61 are pending and at issue.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### **Rejections that are Withdrawn**

#### ***Claim Rejections Withdrawn - 35 USC § 102(b)***

4. The rejection of claims 51-60 under 35 U.S.C. 102(b) as being anticipated by Batz et al. (United States Patent No. 6,117,973 issued September 12, 2000) is withdrawn. Applicant's arguments are persuasive in view of the claim amendments.

***Claim Rejections Withdrawn - 35 USC § 103(a)***

5. The rejection of claim 61 under 35 U.S.C. 103(a) as being unpatentable over Batz et al. as applied to claim 37 above, and further in view of Jenne et al. (United States Patent No. 6,451,535 issued September 17, 2002) is withdrawn. Applicant's arguments are persuasive in view of the claim amendments.

***Post Filing Art***

6. Examiner agrees with Applicant that the publication of May et al. (2003, copy provided with this action) is post filing art, as conveyed by Editor Roger Epton to and as noted by Applicants (see pp. 4 and 5 of Remarks filed 01/14/2010). An independent and extensive search by the Office did not find any prior publication of May et al. relevant to the instant claims. It is noted that the Office found a text file (provided with this action as 2010 retrieved Conference Proceeding) confirming that the publication of May et al. (2003) was associated with the 7<sup>th</sup> International Symposium held in Southampton, United Kingdom during Sept. 18-22, 2001 (see printout of 7<sup>th</sup> International Symposium, held 2001). However, no printed publication by May et al. was found prior to 2003. The text file also shows a date of 2002 but the evidence shows this date refers to the collection of papers and not to their publication. See publication date of 2003 by Mayflower Worldwide Limited on sequential page 2 of May et al. (2003). Also note the in the Preface that Editor Epton states: " . . . many of the invited and contributed lectures were written up and *are published* herein . . ."

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(emphasis by Examiner). This is further evidence that the article by May et al. (2003) was first published in 2003.

**New Claims Allowed**

7. Claims 51-58 and 61 are allowed.

The following is an examiner's statement of reasons for allowance. No prior art was found which teaches or fairly suggests methods of detecting target nucleic acid sequences with a pair of: (1) a quencher which is an  $\alpha$ -aminoanthraquinone and (2) a fluorophore, through reduction of fluorescence energy transfer or through reduction of ground state quenching. The closest prior art found was Batz et al. (2000) who teach  $\alpha$ -aminoanthraquinones but who do not teach or fairly suggest quenchers which are  $\alpha$ -aminoanthraquinones, as claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

**Conclusion**

8. Claims 51-58 and 61 are allowed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Staples whose telephone number is (571) 272-

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9053. The examiner can normally be reached on Monday through Thursday, 9:00 a.m. to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (571) 272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Staples/  
Primary Examiner, Art Unit 1637  
January 15, 2010